HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 793 of 2001
Old No. 601 of 1984

The New India Assurance Co. Ltd. ..... Appellant

Versus

Naik Bhagwan Singh ..... Respondent

Sri T.A. Khan, Advocate for the Appellant.
Sri D.C.S. Rawat, Advocate for the respondent.

Dated: 12.8.2004

Hon. Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

Present appeal has been filed against the judgment and award dated 29.3.1984 passed by the Motor Accident Claims Tribunal, Dehradun.

Briefly stated the facts giving rise to the present appeal are that the respondents have filed a claim petition for grant of compensation on account of the death of Smt. Sheela Devi who was the wife of respondent no.1 and mother of respondents no. 2 to 4, in a motor vehicle accident involving Bus No. UTL 3805. The claimants have alleged that on 23.6.1979 at about 9.30 the bus in question was coming from Ghangora to Dehradun. The bus was being driven rashly and negligently by its driver Surendra Singh. Due to the rash and negligent driving it met with accident at Birpur Cantt. Dehradun and fell down in to a khadd. Smt. Sheela Devi sustained injuries in the accident and

she succumbed to the injuries at the spot. The petitioners claimed a compensation of Rs.2,00,400/- at all.

All the three opposite parties contested the claim petition with similar verbatim defence pleas. They admitted accident and death of Smt. Sheela Devi in the accident, but they denied that the accident took place due to rash and negligent driving. The accident took place at a blind curve in order to save a cyclist and it was beyond the control of human being.

On the basis of the pleading of the parties the Claims Tribunal has framed the following issues.

1. Whether the accident took palce due to rash and negligent driving of the Bus No. UTL 3805 by O.P. no.1 Sri Surendra Singh or took place as alleged in para 24 of the written statement?
2. To what amount of compensation are the applicants entitled from the O.Ps.?
3. Whether the applications are not entitled to any compensation in these proceedings because they have already receive dRs.15,000/- from the State Insurance regarding this very accident?

The claims Tribunal on the basis of ocular testimony of P.W.2 Smt. Kusum Thapa, P.W.3 Khem Bahadur Thapa, P.W.4 Smt. Duga Devi and P.W.5 Nar Bahadur has held that the bus was being driven rashly and negligently by its driver at the time of accident. The vehicle was comprehensively insured with the appellant insurance company and as such the insurance company is liable to satisfy the amount of compensation. The Claims Tribunal has awarded a sum of Rs.41,000/- to the petitioners along with 9% interest against the appellant

insurance company. The amount of compensation appears just and proper.

I find no infirmity in the order passed by the Claims Tribunal. The appeal has no force and is hereby dismissed. No order as to costs.

(Rajesh Tandon, J.)

12.8.2004
*Dhyani